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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

DUSTIN EASTBOURNE,

Plaintiff and Respondent,

v.

ENCINO TARZANA REGIONAL  
MEDICAL CENTER,

Defendant and Appellant.

B203954

(Los Angeles County  
Super. Ct. No. BC338797)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard B. Wolfe, Judge. Affirmed.

Emmet Thornton & Associates and T. Emmet Thornton for Defendant and Appellant.

Law Offices of M. Michael Saint-George and M. Michael Saint-George for Plaintiff and Respondent.

Appellant Encino Tarzana Regional Medical Center (the hospital) appeals from a judgment entered in favor of Dustin Eastborne (respondent)<sup>1</sup> following a jury trial on respondent's claim for professional negligence against the hospital. We affirm.

### **CONTENTIONS**

The hospital contends that: (1) substantial evidence did not support the jury's finding that the hospital breached the applicable standard of care; and (2) substantial evidence did not support the jury's finding that the hospital's actions caused respondent's injuries.

### **FACTUAL BACKGROUND**

Respondent was injured in a motorcycle accident in August 2004. Paramedics transported respondent from the scene of the accident to the hospital. Respondent's injuries included a cut on his leg, which required sutures, and an injury to his hand. In the hospital's emergency room, respondent was treated by Dr. Victor Lopez. Dr. Lopez administered pain medication, ordered and read x-rays of the hand and leg, and sutured and bandaged the leg. Respondent's discharge documents indicated that he suffered lacerations and bruises to his body, but no broken bones. Respondent testified that he "specifically asked [the doctor] if my hand was okay because it was swollen up like a balloon and it really hurt." The doctor stated that he had no broken bones. Upon his release respondent was told that his pain would gradually subside and then discontinue within a few weeks.

Dr. Fred Dennis, an emergency room physician, worked at the hospital in August 2004. Dr. Dennis was familiar with the procedures of the hospital during that time. He explained that whenever there was an x-ray interpretation, one of the emergency room physicians would read it first, then it would go to a radiologist for a "second read." If the radiologist's reading of the x-ray was different from the emergency room doctor's

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<sup>1</sup> In the complaint and appellate case caption, respondent's name is spelled "Eastbourne." However, respondent testified that his name is spelled "Eastborne."

reading of the x-ray, a form would be filled in and returned to the emergency room. It was then the emergency room doctor's responsibility to take "corrective action."

Respondent's x-rays were reviewed by a radiologist the day after he was discharged from the hospital. The radiologist's reading indicated that there was a fracture to respondent's fifth metacarpal. Dr. Dennis testified that his handwriting on a document in the record indicated that, within one day after respondent was discharged, Dr. Dennis called respondent and left a message regarding the variance between Dr. Lopez's reading of the x-ray and the radiologist's reading of the x-ray. Dr. Dennis had no independent recollection of leaving the phone message. However, he indicated that due to patient privacy rights the message would not have specified any information about the nature of the call. The message would "typically be something like this: 'This is Dr. Dennis. I'm calling from Encino Emergency. The time is whatever. Please call me back at this number as soon as you get this message. It's important.'"

Respondent, who lived alone at the time, testified that he "never, ever received any telephonic messages or notification from [the hospital]." More than four weeks after the accident, when he was still suffering from severe pain in his right hand, respondent retrieved his x-rays and medical records from the hospital and went to the emergency room at UCLA Olive View Medical Center (Olive View). Upon examining respondent's hand and the x-ray film at Olive View, Dr. Daniel Kim determined that respondent had suffered a fracture which had improperly healed. Respondent's medical records from Olive View indicated that he was suffering from a "right fifth metacarpal fracture malunion."<sup>2</sup> Respondent testified that as a result of the improper healing, he was suffering from a deformity of the hand called "scissoring." Dr. Kim referred respondent to a reconstructive surgeon. After attempting to correct the problem through physical therapy for several months, respondent had to undergo corrective surgery which involved re-breaking the hand and inserting metal plates and screws.

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<sup>2</sup> "Malunion" is a medical term indicating that the bones did not heal correctly.

Following the surgery, the condition of respondent's hand improved. However, respondent, who works as a carpenter, has had continuing repercussions from the injury. He testified that he experiences pain almost all the time, especially after a heavy day of work. He has to have an assistant move doors for him, and he drops things because he loses his grip. In addition, he suffers limitations on his ability to play guitar and carve sculptures, both of which were hobbies that he previously enjoyed.

### **PROCEDURAL BACKGROUND**

Respondent initiated this action on August 24, 2005, asserting four causes of action against the hospital and Dr. Lopez, the emergency room physician. He filed his first amended complaint on April 13, 2006, alleging essentially the same claims. By stipulation, the parties agreed to a dismissal of all causes of action except the professional negligence count.

Trial commenced on April 4, 2007. The jury returned a special verdict finding that Dr. Dennis was negligent; that Dr. Dennis was an ostensible agent of the hospital; that Dr. Dennis's negligence was a substantial factor in causing harm to respondent; and awarding damages to respondent totaling \$43,268.00. The jury also found that respondent was negligent, but that respondent's negligence was not a substantial factor in causing harm to respondent.

The hospital filed a timely motion for judgment notwithstanding the verdict, arguing that respondent failed to establish medical causation. Respondent opposed the motion. During the hearing on the hospital's motion, the court stated: "I'm looking at the testimony and determining whether or not there was sufficient evidence in the record to support the verdict. In my view, from a standpoint of liability, causation, and damages, there was." While the hospital indicates that the court "did not expressly rule on the motion," the court conveyed its position that "there was sufficient justification for the jury to reach the verdict that [it] reached."

Judgment on the verdict was entered on September 27, 2007. The hospital timely appealed on November 16, 2007.

## DISCUSSION

### I. Standard of review

On appeal, we must determine whether substantial evidence supports the jury's verdict. Substantial evidence is evidence "'of ponderable legal significance, . . . reasonable in nature, credible, and of solid value.' [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873.) In determining the existence of substantial evidence, we look to the entire record, and do not limit our appraisal to isolated bits of evidence. (*Ibid.*) When a judgment is attacked on the ground that insufficient evidence supports it, "the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination. . . . [W]hen two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If . . . substantial evidence [is] found, it is of no consequence that the [fact finder,] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.* [Citations.]" (*Id.* at pp. 873-874, original italics.)

With these principles in mind, we turn to appellant's claims of error.

### II. Evidence regarding the hospital's breach of the standard of care

A key issue at trial was whether the hospital had breached the standard of care governing the manner of notifying respondent of his fractured finger after he was discharged. The hospital argues that respondent's testifying physician, Dr. Abrahamian, stated: "I'm not sure if there is such a thing as, in this instance, a specific standard of care. . . . There's no written policy that says, 'you should have done this all the time.' . . . It's more of a common sense approach." Because respondent offered no evidence of the standard of care, the hospital contends, respondent offered no evidence of breach of the standard of care. The hospital maintains that the testimony of its expert, Dr. Smolens, who opined that Dr. Dennis's single phone message met the standard of care, was thus uncontradicted and conclusive.

We do not agree with the hospital's characterization of Dr. Abrahamian's testimony. While Dr. Abrahamian made it clear that there was no written medical

standard governing Dr. Dennis's obligation to inform respondent of the fracture, Dr. Abrahamian also made it clear that a doctor must rely on his or her own common sense in these situations. Dr. Abrahamian specified: "If I call and I'm not sure if I've made the right -- if I didn't get the right feeling that I have the right person and if it's an important call that I've made to the patient . . . then I would attempt more to find the patient." This testimony allowed the jury to infer that when a doctor makes an important call regarding a patient's medical condition, and is not certain that the message reached the patient, the doctor is obligated to make additional efforts to convey the message. Indeed, Dr. Abrahamian testified that actual notice to the patient is crucial: "When we talk about actual notice, the patient should be notified. However that is, the patient should be aware of it. However you want to do it, you just have to make sure patient is aware of the finding." When Dr. Abrahamian was asked: "In your medical opinion, should Dr. Dennis have followed up on whether or not the patient actually received the notice of the fracture?" Dr. Abrahamian replied: "I believe so."

*Curtis v. Santa Clara Valley Medical Center* (2003) 110 Cal.App.4th 796, cited by the hospital, is distinguishable. In *Curtis*, the plaintiff withdrew his experts before trial and attempted to demonstrate liability on a res ipsa loquitur theory. (*Id.* at p. 800.) The defendants brought a motion for nonsuit, which was granted by the trial court. (*Ibid.*) The appellate court agreed that the issues in the case, which involved the medical causes of significant visual impairment suffered by the plaintiff following surgery, were beyond the common knowledge of a layperson, thus expert testimony was required. (*Id.* at pp. 802-803.) Respondent made no argument that the doctrine of res ipsa loquitur was applicable in this case. Instead, he presented Dr. Abrahamian, who testified that actual notice to the patient is required in the event of a misdiagnosis such as the one that occurred here.

As set forth in *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 122, respondent was required to establish "“(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and

the resulting injury; and (4) actual loss or damage resulting from the professional's negligence.' [Citations.]'" [Citation.]" While Dr. Abrahamian agreed that there was no written policy or specific medical standard regarding a doctor's obligation to inform a patient of a condition under the circumstances, he made it clear that, in his opinion, "prudence" and "diligence" dictated that Dr. Dennis "should have followed up" to ensure that respondent had actual notice of the diagnosis.

Contrary expert testimony exists in the record. For example, the hospital's expert witness, Dr. Smolens, testified that leaving one telephone message constitutes proper notification.<sup>3</sup> However, because Dr. Abrahamian's testimony provided substantial evidence that a breach of duty occurred, we may disregard the conflicting evidence.<sup>4</sup>

### **III. Evidence regarding causation**

As set forth in *Powell v. Kleinman*, *supra*, 151 Cal.App.4th at page 123, a medical negligence plaintiff must not only present evidence from an expert that the defendant breached its duty to the plaintiff, but "that the breach caused the injury to the plaintiff." The hospital argues that respondent failed to supply the evidence needed to meet this requirement. The hospital claims that respondent "offered no evidence that [the hospital's] one-day delay in diagnosis and reporting, specifically the alleged failure to inform him that his hand was broken, actually caused his subsequent injuries." Absent competent medical testimony that the hospital's conduct caused respondent's injuries, the

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<sup>3</sup> Dr. Smolens admitted that "[t]here might be times when a second call would be required," such as when the injury is life-threatening or "may have some impact on [the patient's] livelihood."

<sup>4</sup> Respondent consistently testified that he never received a phone message or any notification whatsoever from the hospital regarding the radiologist's diagnosis. Thus, the jury was also permitted to infer that Dr. Dennis never actually made the call. If the jury made such an inference, the hospital's action in failing to notify respondent would have breached the standard of care agreed to by the hospital's expert, which was that, at a minimum, a single telephone message was required.

hospital argues, “it remains quite possible that plaintiff’s injuries and damages were sustained at the moment of the motorcycle accident.”

Our review of the record reveals that respondent presented the required expert testimony. Dr. Abrahamian testified that it is very important for a patient with a fracture such as the one that respondent sustained to see an orthopedic specialist as soon as possible to prevent complications and assess the need for surgical intervention. He further testified that the patient should see an orthopedic specialist before a “malunion” is formed in order to avoid the necessity of re-breaking the bone. In addition, he testified that untreated fractures of this sort are painful. Dr. Abrahamian’s testimony provided solid evidence of the consequences of an untreated fracture such as the one respondent suffered.<sup>5</sup> This expert testimony, coupled with the medical records and testimony showing that these adverse results in fact occurred when respondent’s fracture was left untreated, provided a sufficient basis for the causation element of respondent’s case. (See *Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 253 [“If . . . a particular act or omission might be expected to produce a particular result, and if that result has in fact followed, the conclusion may be justified that the causal relation exists”].)

Again, the hospital sets forth the testimony of its own expert, who testified that the delay in diagnosis of respondent’s fracture had nothing to do with respondent’s complaints of fatigue and weakness in his hand.<sup>6</sup> Because reasonable, credible evidence

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<sup>5</sup> The hospital complains that Dr. Abrahamian, respondent’s only medical expert, was an emergency room standard of care expert, not a causation expert. However, the hospital did not object when Dr. Abrahamian provided this testimony.

<sup>6</sup> In arguing that respondent failed to establish causation, the hospital focuses on respondent’s failure to establish a causal connection between the delay in treatment and respondent’s “current” complaints of weakness and pain in his hand. However, continuing pain and weakness were not the only harms for which respondent sought compensation. Respondent presented evidence, including expert testimony, that a metacarpal fracture is painful if left untreated. In addition, there was evidence that he

supported the jury's conclusion, we need not consider this contradictory evidence.  
(*Bowers v. Bernards*, *supra*, 150 Cal.App.3d at pp. 873-874.)

**DISPOSITION**

The judgment is affirmed. Respondent is awarded his costs on appeal.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
ASHMANN-GERST

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had to undergo rehabilitation and have his hand re-broken in order to correct the improper healing. The hospital does not argue that these repercussions were not related to the delay in treatment. We note that the jury was apparently attentive to the testimony of the hospital's expert, who opined that respondent's current trouble with the hand in his carpentry work had nothing whatsoever to do with the delay in diagnosis. The jury awarded respondent nothing for *future* pain and suffering or *future* loss of earnings, and compensated respondent only for *past* pain and suffering and *past* loss of earnings.